

TRADE AGREEMENTS AND THE ANTI-TRUST LAWS — *Harry Aubrey Toulmin, Jr. The W. H. Anderson Company, Cincinnati, 1937. pp. xviii, 540. \$7.50*

This book presents a study of Federal and State laws controlling trade agreements, the enforcement of these laws by administrative agencies, and their interpretation by the courts. Completing the volume in January, 1937, its author, a member of a Dayton, Ohio, law firm, includes in it a timely analysis of the much-discussed Robinson-Patman Price Discrimination Act.

Trade agreements, as the author uses the term, mean (1) agreements between buyers and sellers covering the exchange of goods in wholesale or retail trade and (2) agreements among persons, firms, and corporations within an industry or trade covering their competitive relations and other business contacts with each other.

The purpose of the book, as set forth in the foreword, is to present "a practical manual for the guidance of the layman and lawyer so that they may jointly cooperate more successfully to a common end." The author emphasizes "the necessity of the lawyer knowing how business operates, and of the layman knowing the limitations of the law so that he will not expect the impossible from his counsel or from the courts."

Part One, Trade Practice Agreements, deals primarily, although not exclusively, with trade agreements in the second sense in which the author uses the term, namely, agreements among competitors within an industry or trade. In the opening chapter, Origin of the Code Practice, codes are divided into "two basic kinds," viz., "ethical rules" and "regulations for business practices and methods." The first consists of "principles and theory," the second of the rules of "fair play in practice." Moses with his Ten Commandments is given the credit of starting the "industry" of making codes of the first kind [for western civilization?] and the Federal Trade Commission of initiating codes of the second kind operating under governmental sanction for the United States.

Much the greater portion of Part One is devoted to the increased development of regulations for fair play among competitors since the creation of the Federal Trade Commission in 1914. The Commission has been an important factor in this development because of its use of trade practice conferences as a basis for setting up codes of fair practice. The procedure followed consists of: (1) the voluntary submittal of the trade practices in an industry by "a trade association or a substantial portion of the industry"; (2) the formulation of a code in a conference presided over by a member of the Commission; and (3) the submission of the code to the entire Commission for its approval or disapproval.

Since 1919 when the Commission started its trade practice procedure "it has established rules of fair conduct and proper methods of doing business officially for more than one hundred and forty industries . . . ranging from anti-cholera serum for hogs to woven wicker furniture." As the author sees it "the Commission acts as a sort of industrial Moses at the birth of the code, and an avenging angel if anyone violates it." The National Recovery Administration undertook to function in much the same way [but on a much broader scale].

It should not be assumed, however, that codes of fair practice in the United States are entirely due to government initiative. Trade associations were actively at work on the problem independently of government assistance and in spite of government suspicion and restraint long before 1919. Many are still working under substantially the same conditions. The chapters dealing specifically with trade association and with the relationship of the anti-trust laws to business codes contain much that the trade association executive will recognize as pertinent to the problem of determining trade association policies.

Part Two, Industrial and Trade Agreements, consists of one chapter on patent pools and cross licenses and a second on international combines and cartels. In the first, the economic principles underlying the granting of patent rights are examined as a basis for understanding the doctrines applied by the Supreme Court of the United States in drawing the line between lawful uses of the patent monopoly in furtherance of these principles and unlawful uses as a subterfuge for unreasonable restraint of trade. Particular attention is given to decisions in cases concerning the respective rights of the lessor-patentees of machinery and the lessees who use it in industry or trade.

The chapter on international combines and cartels describes various types of international agreements (including those which are entirely private as well as those which are sponsored or approved by government) for the regulation and control of sales, the restriction of output, the division of foreign markets, and the interchange of technical services. This description serves as background for summaries of (1) The Webb Act to Promote Export Trade, 1918, which, under specified conditions, exempts export trade associations registered with the Federal Trade Commission from the provisions of the Sherman Anti-Trust Law, and (2) the Import Trade Act, 1916, which prohibits the systematic importation of articles at prices "substantially less than the actual market value or wholesale price," in the country of origin after the addition to that price of freight charges, duty, and other necessary expenses of landing and selling in the United States.

Part Three, Anti-Trust and Price Discrimination Laws, includes (1) a chapter interpreting the Robinson-Patman Act and its place as part of the Federal Anti-Trust Laws; (2) a chapter outlining the problem of distinguishing between lawful and unlawful price discriminations, and the precedents which the Supreme Court of the United States may consider in deciding upon the constitutionality of the act; and (3) a chapter discussing "specific commercial conditions."

The Robinson-Patman Act, among other things, amends section 2 of the Clayton Act of 1914 so that, in the opinion of the author, compliance with the provisions of this section is easier for business men who wish to maintain the legal principle of competition. This result, he thinks, is accomplished by the addition of the words "of like grade and quality" after the word "commodities" in that part of section 2 which declares unlawful any discriminations in price between different purchasers of commodities substantially lessening competition or tending to create a monopoly in any line of commerce.

Space forbids detailed comment on Part Three. Suffice it to say that the author undertakes to show (1) the factors which bring price discriminations within the purview of the Robinson-Patman Act, (2) the conditions under which price discriminations can be justified, (3) the duties and responsibilities of the Federal Trade Commission in administering the act, and (4) the attitude of the courts in passing upon the conclusions of the findings of the Commission.

Part Four, Forms of Agreement, Complaints, and Answers, includes samples of trade practice rules promulgated by the Federal Trade Commission, representative patent license and cross-licensing agreements, and certain actual sets of complaints and answers before the Federal Trade Commission in respect to alleged violations of the Robinson-Patman Act.

The ten appendices which follow contain the texts of the Federal Anti-Trust Laws, including the Robinson-Patman Act, typical state price discrimination and fair trade acts, and materials prepared by the Federal Trade Commission with respect to the Robinson-Patman Act. The volume concludes with a fifteen-page bibliography of books, articles, and government reports covering a wide range of subjects and a thirteen-page table of cases cited.

The publishers state that in order to keep the book up to date "pocket supplements will be issued from time to time as needed."

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